Mr Justice Clifford

SUPREME COURT OF THE UNITED STATES.

No. ~~307~~. ~~194~~ 128.

THE UNITED STATES, APPELLANTS,

vs.

D. S. GREGORY AND EDWARD L. WILLIAMS.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 307.

THE UNITED STATES, APPELLANTS,

vs.

D. S. GREGORY AND EDWARD L. WILLIAMS.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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1 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this second day of March, A. D. one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Thomas Coal, for two tracts of land in Monterey co., was presented, and ordered to be filed and docketed with No. 716, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *November* 10, 1853.

In case No. 716, Thomas Coal for two tracts of land in Monterey county, the deposition of David Spence, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, with documents marked Nos. 1 & 2, A. F., annexed thereto, was filed.

(Vide page 5 of this transcript.)

2 SAN FRANCISCO, *January* 2, 1855.

Case No. 716, on motion of the counsel for the claimant, with the consent of the U. S. law agent, was ordered to be placed at the foot of the 4th class cases on the trial docket.

SAN FRANCISCO, *January* 16, 1855.

Case No. 716 was submitted without argument, and taken under advisement by the board.

SAN FRANCISCO, *January* 23, 1855.

In the same case Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(Vide page 21 of this transcript.)

And the following order was made, to wit:

(Vide page 23 of this transcript.)

3 *Petition.*

To the board of commissioners for ascertaining and settling private land claims in the State of California:

Your petitioner, Thomas Coal, of Monterey, in said State, respectfully represents to your honorable board that he claims a tract or parcel of land in said Monterey, two hundred and fifty varas long by one hundred and fifty varas broad, with one hundred varas more for a house and corral, as designated by the proper judge.

Your petitioner claims said land under and by virtue of a deed of the same, and described therein, made and executed by Juan B. Alvarado, governor of California, on the 8th day of December, A. D. 1842, and delivered to your petitioner, reference to be had to said deed, which is filed herewith and made a part of this petition, for a more perfect description of the land granted.

Your petitioner further represents that he claims four hundred varas square in addition to the above described tract, and adjoining the same river, as more particularly described in an original deed from Gov. Manuel Micheltoreno to your petitioner, dated on the 28th day of February, A. D. 1844, which is filed herewith and referred to as part of this petition.

Your petitioner prays your honorable board to take into consideration his claim to said lands, and his title to be valid, and confirm the same.

And your petitioner will ever pray.

4 JAMES WILSON, *Petitioner's att'y.*

Filed in office March 2d, 1853.

GEO. FISHER, *Sec'y.*

Recorded in vol. 2 of Petitions on page 101.

GEO. FISHER, *Sec'y.*

5 *Deposition of David Spence.*

OFFICE OF BOARD OF COMMISSIONERS, &c., &c.

This day, before Com'r Alpheus Felch, came David Spence, a witness on behalf of Thomas Coal, No. 716, who, after being duly sworn, deposed as follows:

Questions by Gen'l James Wilson, att'y for claimant.

1st question. What is your age, name, and place of residence?

Answer. My name is David Spence; my age is fifty-five years; and I reside at Monterey, in California.

2d question. Are you acquainted with the handwriting of Juan B. Alvarado and Manuel Jimeno? if so, look at the document now presented to you, purporting to be a grant of land by said Alvarado to Thomas Coal, marked Exhibit No. 1, with the initials "A. F.," and attached to this deposition, and state whether the signatures thereon are the true and genuine signatures of said Juan B. Alvarado and Manuel Jimeno, respectively.

Answer. I am acquainted with the handwriting of both the persons named in the interrogatory. I have looked on the document presented. The signatures appearing thereon are those of Juan B. Alvarado and Manuel Jimeno, are the true and genuine signatures of said Alvarado and Jimeno, respectively.

3d question. Are you acquainted with the handwriting of Manuel Micheltorena, Manuel Jimeno? if yea, look on the document

6 now presented to you, purporting to be a grant of land by said

Micheltoreno to Thomas Cole, marked "Exhibit No. 2," with the initials "A. F.," hereto annexed as a part of this deposition, and state whether the signatures thereon as such are the true and genuine signatures of said Micheltoreno and Jimeno, respectively.

Answer. I am acquainted with the signatures of both of them. I have looked on said document, and the said signatures are the true and genuine signatures of Manuel Micheltoreno and Manuel Jimeno.

4th question. Please state all you know in relation to the lands granted to said Cole by said deed. and what you know in reference to his occupancy and possession of the premises.

Answer. In the year 1839 or 1840, I cannot remember which, I received an order from Governor Alvarado, directed to me as justice of the peace, to go to a place on the Salinas river, known by the name of Tucho, for the purpose of measuring certain parcels of land for cultivation for the different people living on said place. I went and made the measurements. I measured off to Thomas Cole a certain portion, the quantity I do not recollect. I gave him a certificate showing the quantity I had given to him, so that he might present it to the governor in order to obtain a title for the same.

I found Thomas living on the Tucho when I went there. He is the same individual who is the claimant in this case. There were a number of persons living on the tract of the land known by that
7 name, and the governor sent me to assign to each his portion of land, so as to prevent disputes among them.

Thomas Cole resided there a while after I made the measurement above referred to, and then removed to another place. I cannot tell how long he lived there after the measurement was made.

DAVID SPENCE.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but propounded no questions to the witnesses.

Subscribed and sworn to before me this tenth day of November, 1853.

ALPHEUS FELCH.

Filed in office Nov'r 10th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ex. B., vol. 3, p. 391.

GEO. FISHER, *Sec'y.*

8 *Espediente promovido por Dn. Tomas Cole, en solicitud de* 400 *Vs. de Terreno en la ribera del Rio de Monterey.*

Año de 1844.—No. 351.

9 Sello Quinto, un Real.

Habilitado provisionalmente por la Aduana Maratuna del puerto de Monterey en el Departa. de las Californias para el año de mil ochocientos cuarenta y tres.

MICHELTORENO.
MANUEL CASTANARES.

MONTEREY, Eno. 31 de 1844.

Ynforme el S. Srio. del despacho, tomando los necessario lo al efecto V.

MICHELTORENO.

EXMO. SOR. GOBERNADOR: Thomas Cole, naturalizado y avecuidado en este departamento ante la justificacion de V. E. dijo, que no siendome suficiente las 250 varas de terreno que se me han concedido para el cultivo, y demos Cosas del Campo, en que me ocupa, suplico a V. E. me de la estencion de 400 varas por la parte del noraeste y Vega del rio de este lugas que se halla valdio y que sin ninguno ocupe, cuya gracia espero recibir de V. E.

Monterey, 30 de Diciembre de 1843.

THOMAS COLE.

Dispone el Exmo. Sor. Gobernador pase este esped'te al alcalde primero de este lugar para que se sirva informar sobre su contenido.

Monterey, 10 de F'bro de 1844.

MANUEL JIMINO,
Sor. Srio. del despacho.

En contestacion al superior decreto que antecede digo que pr. informaciones del Juez auxiliar de la Vega del Rio aparece que el terreno solicitado en esta instancia se hayo baldió pues en el archivo de mi cargo no existe documento alguno, por donde acredite estar ocupado por lo espuesto V. S. se sirvira disponer lo conveniente.

Monterey, F'bro 23 de 1844.

JOSE DE AMESTE.

EXMO. SOR. GOBERNADOR:

Por los informes que se han tomado del terreno que se pretende aparace estar baldio y no pertenece à ninguno pueblo ni particular alguno y en estencion à la honradez y proporciones del solicitante creo no hoy inconveniente alguno para que se le concedan las cuatro cientos varas que pretende mas la determinacion de V. E. sera la mas acertada.

Monterey, Febrero 24 de 1844.

MANUEL JIMENO.

MONTEREY, *Febrero* 24 *de* 1844.

Conf'e al anterior informe obre el S. Srio. doy el despacho.

MICHELT'O.

MONTEREY, *Febrero* 28 *de* 1844.

Vista la peticion con que da vista esta espediente las informes que preceden. Con todo lo demas que se tubo presente y ver convino y conforme con las leyes y reglamentos de la materia, declaro à Dn. Tomas Cole dueño de cuatro cientos varas cuadras por la riberia del rio de Monterey, debiendo comenzar sus medidas, desde al puerto que

se le ha señalado en la 1a. concesion que se le hizo de 2 de 250 varas a mas de 100 para casa y corral, librese el correspondiente despacho y tomese razon en el libro respectivo.

El E. S. Gobernador asi lo decretó, mandó y firmó.

11 OFFICE OF THE SUVREYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such now having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the five preceding and hereunto annexed pages of tracing paper, numbered from one to five, inclusive, exhibit a true and accurate copy of a certain document now on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this fourth day of November, A. D. 1853.

JOHN C. HAYS,
U. S. Surveyor Gl. Cala.

Filed in office Nov. 10th, 1853.

GEO. FISHER, *Sec'y.*

Translation of espediente.

12 Expediente instituted by Don Tomas Cole, soliciting four hundred varas of land on the bank of the river of Monterey.

Year 1840.—No. 351.

Fifth Seal, One Real.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-three.

(Signed) MICHELTORENO.
MANUEL CASTANARES.

MOST EXCELLENT SEÑOR GOVERNOR: Thomas Cole, a naturalized Mexican citizen and resident of this department, appears before the justice of your excellency and represents that the 250 varas of land which have been granted him are not sufficient for the agricultural and other rural pursuits which he follows, and prays your excellency to grant him the augmentation of four hundred varas on the northwest side thereof and in the bottom land on the river at this place, which is vacant and unoccupied, which favor he hopes to merit of your excellency.

[SEAL.] (Signed) THOMAS COLE.

Monterey, Jan. 31, 1844, (in margin.)

The secretary of state will report, taking the necessary proceedings therefor.

(Signed) MICHELTORENO.

SEÑOR SECRETARY OF STATE: In answer to the foregoing
13 superior decree I would state, that from the information of the auxiliary Juez of the Vega del Rio, it appears that the land prayed for in this petition is vacant, and there is no document in the archives under my charge which accredits the occupation of it by any. Whereupon your excellency will determine what may be proper.

Monterey, February 23, 1844.

(Signed) JOSE DE AMESTI.

(This order precedes the next above.) By order of his excellency the gobernor, let this expediente be referred to the first alcalde of this place, in order that he may be pleased to report upon the contents thereof.

Monterey, Feb'y 1st, 1844.

MANUEL JIMENO.

MOST EXCELLENT SOR. GOBERNOR: According to information obtained, the land petitioned for appears to be vacant, and does not belong to any pueblo or individual whatever, and considering the integrity and the means of the petitioner, I believe that there are no obstacles whatever to the granting to him of the four hundred varas which he solicits, but the decision of your excellency will be the most proper.

Monterey, February 24, 1844.

(Signed) MANUEL JIMENO.

Monterey, February 24, 1844. The secretary of state will proceed in conformity with the foregoing report.

(Signed) MICHELT'O.

14 MONTEREY, *February* 28, 1844.

In view of the petition produced in this expediente, the preceding reports, and everything else which was considered and necessary to examine, and in conformity with the laws and regulations upon the subject, I declare Don Tomas Cole to be the owner of four hundred varas square, and the bank of the river of Monterey, the measurement thereof to commence from the point designated in the first grant made to him of two hundred and fifty varas, besides one hundred varas for a house and corral. Let the corresponding title issue and an entry be made of it in the respective book. His excellency the governor thus ordered, decreed, and signed.

I, George Fisher, secretary of the U. S. land commission to ascertain and settle private land claims in the State of California, do hereby certify the foregoing to be a true and correct translation of

a document in case No. 716, Thomas Cole *vs.* The United States, for the place named ———, in Monterey, now on file in this office.

In testimony whereof I have hereunto signed my name, at office, at the city of San Francisco, Cal., this 17th day of January, A. D. 1855. GEO. FISHER, *Sec'y.*

Fteld in office Jan. 17, 1855.

15 Sello Terciro, Dos Reales.

Habiltado provisionalmente por la Aduana Marita. del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO.
ANTONIO MARIA OSIO.

Revalidado para los anos de 1842 y 1843.

ALVARADO.
ANTONIO MARIA OSIO.

Juan B. Alvarado, Gobernador Constitucional del Departamento de los Californias.

Por cuanto D. Tomas Cole, ha pretendido para su cultivo una parte de terreno nombrado el Tucho usando de las facultades que me son conferidas a nombre de la Nacion Mejicana, he venido en concederle dos cientos cincuenta vs. de largo y ciento cincuenta de ancho con mas cien vs. para casa y corral todo conforme à la medicion que se hizo por el Juzgado de este lugar sujetandore a la aprobacion de la Exma. Junta Departaml. y a las condiciones siguientes:

1a. Podra cercarlo sin perjudicar los travesias camino y servidumbres lo disfrutasa libre y esclusivamente destinandolo al uso y cultivo que mas le acomode con la de estes, habitada la casa lan estuviese fabricada.

2o. Solicitará del Juez Espectivo que le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra las mojoneras correspondientes.

3o. Si contraviniere á estas condieiones per dera su derecho al terreno y sera denunciable por otra.

16 En consequencia mando que temendoso el presente pr. valedcio titulo se entregue al interesado para su resguardo y demas fines. Dado en Monterey a ocho de Diciembre, de (1842) mil ochocientos cuarenta y dos. JUAN B. ALVARADO.

MAN'L JIMENO, *Srio.*

Sello Terciro, Dos Reales.

Habilitado provisionalmente por la Aduana Mar'ta de Monterey en el Departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO.
ANTONIO MARIA OSIO.

Revalidado para los años de 1842 y 1843.

ALVARADO.
ANTONIO M'A OSIO.

Filed in office Novem'r 10th, 1853.

GEO. FISHER, *Sec'y.*

17 *Translation of grant "A."*

Third Seal, Two Reales.

Provisionally qualified by the maritime custom house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

XIMENO.
[SEAL.] ANTONIO MARIA OSIO.

Revalidated for the years 1842 and 1843.

ALVARADO.
ANTONIO M'A OSIO.

Juan B. Alvarado, constitutional governor of the department of the Californias:

Whereas Don Thomas Coal has sought to obtain, for cultivation, a portion of land called Tucho; exercising the powers conferred on me in the name of the Mexican nation, I have conceded to him two hundred and fifty varas long by one hundred and fifty broad, with a hundred varas more for a house and a corral, all according to the measurement which was made by the judge of this place, subjecting himself to the approval of the most excellent departmental board, and to the following conditions:

1st. He may enclose it without injuring the passages, roads, and servitudes. He shall enjoy it freely and exclusively, applying it to the use and cultivation that may suit him best, under the condition that the house that may be built there shall be inhabited.

2d. He shall solicit the proper judge to give him judicial possession in virtue of this despatch, whereby the boundaries shall be marked out, in the limits of which he shall put the proper land-marks.

3d. If he shall contravene these conditions, he shall lose his right to the tract, and shall be denounceable by others.

Wherefore, I command you that the present being held as valid be delivered to the party interested, for his safety, and other purposes.

Given at Monterey on the eighth of December, (1842) one thousand eight hundred and forty-two.

JUAN B. ALVARADO.

MAN'L JIMENO, *Sec'y.*

Filed in office March 2d, 1853.

GEO. FISHER, *Sec'y.*

19 Sello Cuarto, Dos Reales.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey en el Departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENO.
PABLO DE LA GUERRA.

Manuel Micheltoreno, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana Mayor del mismo Gobernador Comand'te Gra'l é Inspector del Departamento de Californias:

Por cuanto Dn. Tomas Cole, Mejicano por naturalizacion ha pretendido para su benificio personal el numero de cuatro cientos varas en cuadro, que estan por la parte del norueste por deberse empezar las medidas desde el punto donde tenga suslimites de la primera concesion que se les hizo de dos cientos cincuenta varas, situado todo el terreno por la ribera del rio; practicadas, previamente las diligencias y averiguaciones concermentes segun lo dispuesto por las leyes y reglamentos, usando de las facultades que me son conferidas nombre de la nacion Mejicana he venido concederle las cuatro cientos varas mencionados, sugetandose á la aprobacion de la Exma. Asamblea Departamental, yo las condiciones siguientes:

1°. No podra vendedos, enagenalos ni hipotiendos imponer censo, vinculo ni otro gravanien alguno.

2°. Podra cercado sin perjudicar las travesias, caminos ni servidumbres, lo desfrutará libre y esclusivamente, destinandoles al cultivo que mas le acomode.

20 3°. Solicitara del juez respectivo que le de posecion juridica en virtud de esta despacho por la cual se le demarcaran los luideros correspondientes.

4°. Si contraviniere a estas condiciones perderá su derecho al terreno y sera denunciable por otro.

En consecuencia mando que temendose por firme y valedero el presente titulo se entregue al interesado para su resguardo y demas fines tomandose razon de el presente en el libro respectivo.

Dado en, Monterey a veinte ocho de Febrero de mil ocho cientos cuarenta y quatro.

MAN'L MICHELTORENO.

MAN'L JIMENO, *Srio.*

Queda tomada razon en el libro respectivo á fojas.

JIMENO.

Filed in office Nov. 10, 1853.

GEO. FISHER, *Sec'y.*

21 *Translation of grant "C."*

Fourth Seal, Two Reales.

Provisionally qualified by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one

thousand eight hundred and forty-four, and one thousand eight hundred and forty-five.

MICHELTORENA.
PABLO DE LA GUERRA.

[SEAL.]

Manuel Micheltoreno, brigadier general of the Mexican army, adjutant general of the staff of the same, governor, commander-in-chief and inspector of the department of the Californias :

Whereas Don Thomas Cole, Mexican by naturalization, has sought to obtain for his personal benefit the number of four hundred varas square—which lie on the northwest side, for the measurement ought to begin from the point where his boundaries of the first concession, which was made to him for two hundred and fifty varas may be—the whole tract of land being situated along the margin of the river, all the steps and investigations concerning thereto having been previously taken according to the dispositions of the laws and regulations. Exercising the powers conferred on me, in the name of the Mexican nation I have conceded to him the above mentioned four hundred varas, subjecting himself to the approval of the most excellent departmental assembly, and to the following conditions :

1st. He shall not sell them, alienate, or mortgage, nor impose tax, entail, nor any other liabilities.

2d. He may enclose it without *injury* the passages, roads,
22 or servitudes; he shall enjoy them freely and exclusively, applying to the cultivation that may suit him best.

3d. He shall solicit the proper judge to give him juridical possession in virtue of his despatch, by which the corresponding boundaries shall be marked out.

4th. If he shall contravene these conditions, he shall forfeit his right to the land and shall be denounceable by others.

Wherefore I command that the present title, being held firm and valid, be delivered to the party interested, for his security and other purposes; a registry of the present being made in the proper book.

Given at Monterey on the twenty-eighth day of February, one thousand eight hundred and forty-four.

MAN'L MICHELTORENO.

MAN'L JIMENO, *Sec'y.*

A registry is made in the proper book.

JIMENO.

Filed in office March 2, 1853.

GEO. FISHER, *Sec'y.*

23 *Opinion of the Board.*

THOMAS COAL *vs.* THE UNITED STATES. } For two small parcels of land in Monterey county.

The petitioner claims under two grants which are given in evidence; the first made to him by Governor Alvarado on the 8th day

of December, 1842, and the second by Governor Micheltoreno on the 28th day of February, 1844. No approval of the departmental assembly was obtained in either case.

The land granted, as described in the first grant, was a part of the place called "El Tucho," and was "two hundred and fifty varas long by one hundred and fifty varas broad, with a hundred varas more for a house and a corral," and reference is made, for a description of it, to an assignment of lands in that locality previously made by the judge of that place. In order to identify and describe the land which had been assigned by the judge to said Coal, the deposition of David Spence is taken. He swears that, in 1839 or 1840, he was directed by the governor to go to the place called Tucho, on the Salinas river, for the purpose of measuring off certain parcels of land, for cultivation, to the different people living on said place; that he performed the service; that a portion was assigned to said Coal, but he does not recollect the quantity, and gives no description of its locality, form, or boundaries. He says that he gave to Coal a certificate, so that he might use it in obtaining his title of the governor.

24 This certificate is not given in evidence, nor has the petitioner produced either a traced copy of the proceedings in obtaining this grant, or any map or other description of the premises claimed; nor was judicial possession, although required by the grant, ever procured.

There is not enough in this testimony to identify and segregate the land.

The premises described in the second grant have nothing to fix their locality, excepting that they adjoin the two hundred and fifty varas conceded in the other grant, lying on the northwest side of it, and on the river. The want of certainty in the first description applies also to this. The former being too uncertain and vague to identify any particular portion of land which could pass under the first grant; the latter, which depended entirely on the former for its location, is equally uncertain.

It was the duty of the claimant to introduce, in aid of his grant, the description of the land contained in the judge's return of the distribution of the lands made by him, which was referred to [in] the first grant, or to have aided the defective description contained therein by other competent evidence; without it, as the case now stands, the proof is insufficient to warrant a decree of confirmation.

(Rejected.)

Filed in office Jan. 23, 1855.

GEO. FISHER, *Sec'y.*

25 Recorded in Record of Decisions, vol. 2, page 495.

GEO. FISHER, *Sec'y.*

Decree.

THOMAS COAL
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is not valid; and it is therefore decreed that his application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
Commissioners.

Filed in office Jan. 23d, 1855.

GEO. FISHER, *Sec'y.*

26 And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United States district court for the southern judicial district of California, and the other be transmitted to the Attorney General of the United States.

27 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary of the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-three pages, numbered from 1 to 23, both inclusive, to contain a true, correct and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 716, on the docket of the said board, wherein Thomas Coal is the claimant against the United States for the place known by the name of "Two tracts of land in Monterey county."

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-first day of July, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL.] GEO. FISHER, *Sec'y.*

Filed August 1st, 1855.

C. E. CARR, *Clerk.*

28 *Proceedings in U. S. dis't court, southern district of Cal'a.*

30 *Notice of appeal.*

In the United States district court for the southern district of California.

THOMAS COAL, appellant,
vs.
THE UNITED STATES, appellee.

To Charles E. Carr, clerk of said court, and Pacificus Ord, U. S. dis't att'y for said district:

Please take notice, that it is the intention [of] the said appellants to prosecute an appeal to the said court from the decision of the board of United States land commissioners to ascertain and settle the private land claims in California, which said decision was rendered on the 23d day of January, A. D. 1855, rejecting the claim of the said appellant for two small tracts of land situate in Monterey county; the said claim being known on the docket of the said commissioners as No. (716) seven hundred and sixteen.

D. S. GREGORY,
Attorney for appellants.

MONTEREY, *Dec.* 15th, 1855.

Filed Jan'y 5, 1856.

C. E. CARR, *Cl'k.*

31 *Petition for review.*

In the United States district court for the southern district of California.

THOMAS COLE, appellant,
vs.
THE UNITED STATES, appellee.
No. 274.
Transcript No. 716.

Hon. I. S. K. Ogier, judge of said court:

The petition of the said appellant, Thomas Coal, respectfully shows, that heretofore, to wit, on or about the second day of March, A. D. 1853, he presented to the board of United States land commissioners to ascertain and settle private land claims in California "a petition claiming title to the several small tracts of land situate in the county of Monterey, and State aforesaid, and more particularly described in the said petition, to which reference is had as a part hereof; and your petitioner further shows, afterwards, to wit, on the 23d day of January, A. D. 1855, the said commissioners, then sitting as a board, rendered a final decision in said case, rejecting the petition of this appellant and decreeing his said title to be invalid; and he further shows, that afterwards, to wit, on the first day of August, A. D. 1855, a duly certified transcript of the said petition, and the proceedings had thereon before the said commissioners, was filed in the

office of the clerk of this court, and that thereafter, to wit, on the 5th day of January, A. D. 1856, the said appellant filed likewise in the said office, by his attorney, a notice of his intention
32 to prosecute an appeal to this court, which said transcript the said appellant specially refers to, and prays that it may be regarded as a part of this his petition for a review, the same containing a deraignment and exhibition of his title to the said tract of land.

And the said appellant further says, that the said tracts of land are situate in this judicial district, and are within the jurisdiction of this court; that his title to the same is a good and valid title, and should be confirmed to him; and that the said decision of the said commissioners is erroneous and contrary to law, and should be reviewed, reversed, and set aside.

Wherefore the said appellant prays that this honorable court will review the said decision and decree of the said commissioners, and annul, vacate, and set aside the same, and that it will decree the title of this appellant for the said tracts of land to be a good and sufficient title, and that he may have such other and further orders, decrees, and relief as he may in law and equity be entitled to.

D. S. GREGORY,
Attorney for appellant.

Filed Jan'y 8th, 1856.

C. E. CARR, *Cl'k.*

33 *Summons.*

THE UNITED STATES OF AMERICA,
Southern district of California, ss:

The President of the United States to P. Ord, U. S. dis't att'y, &c., greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States, in the district court of the United States in and for the southern district of California, on the 8th day of January, in the year of our Lord one thousand eight hundred and fifty-six, at the city and county of Los Angeles, in said district, by Thomas Coal, praying the court to review the decision of the commissioners rejecting his claim to a tract of land called "Lot in Monterey;" and that you are required to appear at said court in said city within ten days after the service hereof, if served on you within the county of Los Angeles; and within twenty days if served on you in the county of San Diego or San Bernardino; and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded therein.

In witness whereof I have hereunto set my hand and affixed the
[SEAL.] seal of said court, at the city of Los Angeles, this 8th day of January, A. D. 1856.

34 C. E. CARR, *Cl'k.*

1167

Received January 9th, 1856.

EDWARD HUNTER,
U. S. marshal.
Pr. M. L. GOODMAN, *Deputy.*

I served this summons, together with a certified copy of the petition, upon P. Ord, U. S. att'y for the south. dist., by delivering to him a true copy of the same at Los Angeles, in the southern district of California, on the 9th day of January, A. D. 1856.

EDWARD HUNTER,
U. S. marshal.
Pr. M. L. GOODMAN, *Dep'ty.*

Sworn to and subscribed before me this 9th day of Jan'y, A. D. 1856.

C. E. CARR, *Clk.*

Answer of U. S. dist. att'y.

35 In the district court of the United States for the southern district of California.

Hon. Isaac S. K. Ogier, judge.

THOMAS COAL, appellant,
vs.
THE UNITED STATES, appellee. } No. 274. Transcript, No. 716.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition of Thomas Coal for a review of the decision of the board of United States land commissioners to ascertain and settle private land claims in California, rejecting his claim to several small tracts of land situate in Monterey county, California, says: That he denies all and singular each and every allegation in said petition contained; and further, this respondent denies generally the validity of the alleged title of the claimant to the lands claimed by him; and the said respondent prays that this hon. court will affirm the decision of the said commissioners in said case, and decree the said alleged title of said claimant to be invalid and for general relief.

P. ORD,
Attorney of the United States for the southern district of California.

Filed Jan'y 12th, 1856.

C. E. CARR, *Clk.*

Order granting leave to take further testimony.

36 Whereupon the following proceedings were had in open court, to wit:

United States dist. court, south'n dist. of California.—December term, A. D. 1855.

JANUARY 10th, A. D. 1856.

THOMAS COAL, appellant,
vs.
THE UNITED STATES, appellee. } No. 274.

In this case, on motion of attorney for appellant, it was ordered by the court that leave be granted to take further testimony.

Order substituting parties.

United States district court, south'n dist. of Cal'a.—December term, A. D. 1856.

JANUARY 6th, A. D. 1857.

THOMAS COAL, appellant,
vs.
THE UNITED STATES, appellee. } No. 274. "Lot in Monterey."

Now, on this day, come the parties by their respective attorneys, the appellant by D. S. Gregory, esq., his attorney, and the appellees by P. Ord, U. S. att'y, their att'y.

Whereupon, on motion of D. S. Gregory, esq., counsel aforesaid, and on showing to the court that the said appellant has transferred his interest by deed in the land claimed in this case to D. S.
37 Gregory and Edward L. Williams,

It is therefore ordered, that the names of D. S. Gregory and Edward L. Williams be substituted on the record in the place of the said Thomas Coal, with the privilege of conducting the said cause in their names.

38 *Deed to Williams.*

This indenture, made the tenth day of December, in the year of our Lord one thousand eight hundred and fifty-six, between Thomas Coal, party of the first part, of this city and county of Monterey, State of California, and Edward L. Williams, of the same place, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quit-claimed, and by these presents does remise, release, and quit-claim, unto the said party of the second part, and to his heirs and assigns forever, all the undivided one third part of the two following pieces of land, lying and being situate in the county

of Monterey aforesaid, on the western side of the Salinas river, near to the old crossing from the main road from the town of Monterey to the said river, and adjoining the farm of Thomas Blanco, deceased, and being thus described, to wit : 250 varas long by 150 varas broad, with 100 varas more for a corral, being part of the place called "El Tucho," and having been granted to the said party of the first part by the Mexican governor, Alvarado, on the 8th day of December, 1842; and also 400 varas long by 400 varas broad, adjoining the last described piece of land, and lying on the northwest side of it, and on the said river Salinas, and having been granted to the said party of the first party by the Mexican governor, Micheltoreno, on the 28th day of February, 1844; for a more full description of the two said grants of land, one-third part of which are hereby in-
39 tended to be conveyed, reference is made to the original title papers, now filed with the U. S. board of land commissioners, and being case as docketed No. 716; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest in and to the above described property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and assigns forever.

In witness whereof the said party of the first part has hereunto set hand and seal the year first above written.

THOMAS COLE, [L. S.]

Signed and delivered in the presence of—
C. RICHARDS.

STATE OF CALIFORNIA,
County of Monterey, Monterey township, ss:

On this twelfth day of December, A. D. one thousand eight hundred and fifty-six, before me, C. J. Richards, a justice of the peace in and for said township of said county, personally appeared Thomas Cole, to me personally known to be the individual described
40 in and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my seal, in the county aforesaid, the day and year first above written.

C. J. RICHARDS,
Justice of the peace, Monterey township and county.

Received for record December 12, 1856, at 3.30 p. m., and recorded in book "C," Conveyances, page 22 & 23.

EDW. L. WILLIAMS,
Co. recorder, Monterey co.
By JAS. H. GLEASON, *Deputy.*

Filed Jan'y 6th, 1857.

C. SIMS, *Clk.*

41 *Conveyance to D. S. Gregory.*

This indenture made the eleventh day of January, in the year one thousand eight hundred and fifty-six, between Thomas Cole, party of the first part, of the city and county of Monterey, State of California, and Durell S. Gregory, of the same place, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of two hundred and fifty dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quit-claimed, and by these presents does remise, release, and quit-claim, unto the said party of the second part, and to his heirs and assigns forever, all the undivided two-thirds part of the following pieces of land lying and being situated in the county of Monterey, on the western side of the Salinas river, near to the old crossing from the main road from the town of Monterey to the said river, and adjoining the farm of Thomas Blanco, deceased, and being thus described, to wit: 200 varas long by 150 broad, with 100 varas more for a corral, being part of the place called "El Tucho," and having been granted to the said party of the first part by the Mexican governor, Alvarado, on the 8th day of December, 1842; and also 400 varas long by 400 varas broad, adjoining the last-described piece of land, and lying on the northwest side of it and on the said river Salinas, and having been granted to the said party of the first part by the Mexican governor, Micheltoreno, on the 28th day of February, 1844; for a more full description of the two said grants of land, two-thirds of which are hereby intended to be conveyed, refer-

42 ence is made to the original title papers now filed with the U. S. board of land commissioners, and being case as docketed No. 716; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest of the above-described property, possession, claim and demand, whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to his assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written, the following words inserted before signing: And adjoining the farm of Thomas Blanco, deceased.

THOMAS COLE. [SEAL.]

Signed and delivered in the presence of—
EDW. L. WILLIAMS.

STATE OF CALIFORNIA,
County of Monterey, ss:

On this eleventh day of January, A. D. one thousand eight hundred and fifty-six, before me, recorder in and for said county, personally appeared Thomas Cole, known to me to be the individual described in, and who executed the foregoing conveyance, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, in the county aforesaid, the day and year first above written.

EDW. L. WILLIAMS,
County recorder, Monterey county.

Re'd for record January 11th, 1856, at 3 p. m., and recorded in book B of Conveyances, page 443.

EDW. L. WILLIAMS,
County recorder, Monterey county.
By JAS. H. GLEASON, *Deputy.*

Filed Jan'y 6th, 1857.

C. SIMS, *Clerk.*

44 *Leave to take testimony.*

Whereupon the following proceedings were had, to wit:

United States district court, south'n dis't of Cal'a.—Regular June term, A. D. 1857.

JUNE 3d, 1857.

THOMAS COLE, appellant,
vs.
THE UNITED STATES, appellee. } No. 274.

On motion of counsel for appellant in this case,

It is ordered, that the appellant have leave to take further testimony.

45 *Deposition of D. Spence.*

U. S. dis't court for the south'n district of California.

D. S. GREGORY, E. L. WILLIAMS, substituted in place of THOMAS COLE, appellants,
vs.
THE UNITED STATES, appellees. } Case docket, No. 274.

Deposition of David Spence, a witness on the part of appellants in the above cause.

Present: P. Ord, U. S. dis't att'y; D. S. Gregory, att'y for appellants. At Monterey, 5 June, 1857.

Question. What is your name, age, and residence?

Answer. My name is David Spence, my age is 58, and I reside in Monterey.

Quest. Look upon document here exhibited to you, purporting to be evidences of juridical possession of lands given by you to Thomas Cole, as justice of the peace, jurisdiction of Monterey, and state what you know about the same.

Ans. I have looked on the document referred to, and recognise the writing of my secretary, Manuel Castro, and my own rubrica. I recollect very well of having given possession to Thomas Cole of the land referred to in said document, when I was justice of peace of Monterey, in 1840. The land is situated at a place which was then called, and known still as, the Pueblo of Refugio, on the north bank of the Salinas river, some distance above the rancho belong-
46 ing to Don Juan Cooper. The document referred to is the original evidence of the possession given by me. On one side the land joined on that of Jose Higuera.

Question. Why was not the said document signed by you in your official capacity?

Ans. It has my rubrico, which, according to Mexican law, was considered sufficient in instances of this kind. The preceding document is concerning the land referred to as being the land of Jose Higuera, bounding the land of Thomas Cole. The preceding document is the one on the same page as that of Thomas Cole.

D. SPENCE.

Sworn to and subscribed to before [me] this fifth day of June, A. D. 1857, at Monterey.

ALEX. S. TAYLOR, *Dep'ty clerk.*

Filed 5 June, '57.

A. S. TAYLOR, *Dep'ty clerk.*

47 Sello cuarto de oficio.

Habilitado provicionalmente por la administracion de la Aduana Maritima de Monterey de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA.
ANGEL RAMIREZ.

Copy of judicial possession.

JOSE HIGUERA:

El mismo dia se le señaló al Cuo. Jose Higuera desde su casa para el Este hasta el Paderon ochocientos varas de largo y ciento cincuenta varas de aucho, mas cien para casa y corral, y para que conste lo firmé con los de asistencia.

TOMAS COL:

En seguida se le midieron al estrangen Tomas Cole doscientas cincuenta varas de largo y ciento cincuenta de aucho junto á Jose Higuero al oeste y para que conste lo firmo con los de asistencia.

STATE OF CALIFORNIA,
County of Monterey, ss:

OFFICE OF THE COUNTY RECORDER.

I, Edw'd L. Williams, county recorder in and for Monterey county aforesaid, and as such having in my office and in my charge and custody sundry written documents transferred to this office relative to the former Spanish and Mexican territory of department of Upper California, by virtue of the power vested in me by law, do
48 hereby certify that the hereunto annexed sheet of tracing paper, containing one page of writing and verified by my initials thereon, exhibits a true and accurate copy of a portion of writing in an unbound book on the page following the one marked 7.

In witness whereof I have hereunto signed my name officially, and
[SEAL.] caused my seal of office to be affixed, at the city of Monterey, this fifth day of June, A. D. 1857.

EDW'D L. WILLIAMS,
County recorder, Monterey county.

Filed June 5th, '57.

A. S. TAYLOR, *Dep'ty clk.*

Depo. of Ambrosio Gomez.

49 United States district court for the southern district of California.

D. S. GREGORY and EDW'D L. WILLIAMS, applts., } Docket No. 274.
vs. } Claim for lands in
THE UNITED STATES, appellees. } Monterey county.

Deposition of Ambrosio Gomez, a witness on the part of appellants, (substituted by order of the court, in place of Thos. Cole, original claimant,) the said witness having been duly sworn in said cause.

1st question. What is your name, age, and place of residence?

My name is Ambrosio Gomez; live in Monterey county, California, and am 33 years of age.

2d question. State whether or not you know the lands described in the espediente forming part of the transcript in this case; if you do, how long have you known them?

Ans. Having said espediente, I state that I do know said lands, and have known them since they were in Thomas Cole's possession; am not certain when it was, whether in the year 1843 or 1844.

3d. What kind of possession did he (Cole) have of it?

50 Ans. He lived upon it, cultivated it, had corrals and a house upon it, and had a part of it under fence.

Present: P. Ord, U. S. dis't att'y; D. S. Gregory, att'y for appellants. At Monterey, 5 June, 1857.

Question. What is your name, age, and residence?

Answer. My name is David Spence, my age is 58, and I reside in Monterey.

Quest. Look upon document here exhibited to you, purporting to be evidences of juridical possession of lands given by you to Thomas Cole, as justice of the peace, jurisdiction of Monterey, and state what you know about the same.

Ans. I have looked on the document referred to, and recognise the writing of my secretary, Manuel Castro, and my own rubrica. I recollect very well of having given possession to Thomas Cole of the land referred to in said document, when I was justice of peace of Monterey, in 1840. The land is situated at a place which was then called, and known still as, the Pueblo of Refugio, on the north bank of the Salinas river, some distance above the rancho belong-
46 ing to Don Juan Cooper. The document referred to is the original evidence of the possession given by me. On one side the land joined on that of Jose Higuera.

Question. Why was not the said document signed by you in your official capacity?

Ans. It has my rubrico, which, according to Mexican law, was considered sufficient in instances of this kind. The preceding document is concerning the land referred to as being the land of Jose Higuera, bounding the land of Thomas Cole. The preceding document is the one on the same page as that of Thomas Cole.

D. SPENCE.

Sworn to and subscribed to before [me] this fifth day of June, A. D. 1857, at Monterey.

ALEX. S. TAYLOR, *Dep'ty clerk.*

Filed 5 June, '57.

A. S. TAYLOR, *Dep'ty clerk.*

47 Sello cuarto de oficio.

Habilitado provicionalmente por la administracion de la Aduana Maritima de Monterey de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA.
ANGEL RAMIREZ.

Copy of judicial possession.

JOSE HIGUERA:

El mismo dia se le señaló al Cuo. Jose Higuera desde su casa para el Este hasta el Paderon ochocientos varas de largo y ciento cincuenta varas de aucho, mas cien para casa y corral, y para que conste lo firmé con los de asistencia.

TOMAS COL:

En seguida se le midieron al estrangen Tomas Cole doscientas cincuenta varas de largo y ciento cincuenta de aucho junto á Jose Higuero al oeste y para que conste lo firmo con los de asistencia.

STATE OF CALIFORNIA,
County of Monterey, ss:

OFFICE OF THE COUNTY RECORDER.

I, Edw'd L. Williams, county recorder in and for Monterey county aforesaid, and as such having in my office and in my charge and custody sundry written documents transferred to this office relative to the former Spanish and Mexican territory of department of Upper California, by virtue of the power vested in me by law, do
48 hereby certify that the hereunto annexed sheet of tracing paper, containing one page of writing and verified by my initials thereon, exhibits a true and accurate copy of a portion of writing in an unbound book on the page following the one marked 7.

In witness whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of Monterey, [SEAL.] this fifth day of June, A. D. 1857.

EDW'D L. WILLIAMS,
County recorder, Monterey county.

Filed June 5th, '57.

A. S. TAYLOR, *Dep'ty clk.*

Depo. of Ambrosio Gomez.

49 United States district court for the southern district of California.

D. S. GREGORY and EDW'D L. WILLIAMS, applts., } Docket No. 274.
vs. } Claim for lands in
THE UNITED STATES, appellees. } Monterey county.

Deposition of Ambrosio Gomez, a witness on the part of appellants, (substituted by order of the court, in place of Thos. Cole, original claimant,) the said witness having been duly sworn in said cause.

1st question. What is your name, age, and place of residence?

My name is Ambrosio Gomez; live in Monterey county, California, and am 33 years of age.

2d question. State whether or not you know the lands described in the espediente forming part of the transcript in this case; if you do, how long have you known them?

Ans. Having said espediente, I state that I do know said lands, and have known them since they were in Thomas Cole's possession; am not certain when it was, whether in the year 1843 or 1844.

3d. What kind of possession did he (Cole) have of it?

50 Ans. He lived upon it, cultivated it, had corrals and a house upon it, and had a part of it under fence.

4th. State whether or not you know the boundaries of said land, and if you do, state your means of knowing them, and what they are.

(Objected to by district attorney.)

Ans. I know of three of the boundaries; one is the lands of Tomas Blanco, another is the lands of my father, Joaquin Gomez, and the other is the Salinas river. I know that these are the boundaries, because the title of my father cites the rancho of Thos. Cole as a boundary, and because I have seen the lands of Blanco joining them, and I have always seen the lands joining the river, and have never known them claimed by any one else.

(Answer objected to.)

5th. What was there, if anything, to mark the boundaries between these lands and your father's?

(Objected to by U. S. dist. att'y.)

Ans. I don't know.

51 6th. How many years did Thomas Cole own said lands?

Ans. From six to eight years.

AMBROSIO GOMEZ.

Sworn to and subscribed before me this 4th day of June, A. D. 1857.

ALEX. S. TAYLOR,
Deputy clerk U. S. district court, etc.

Filed 4th June, 1857.

A. S. TAYLOR,
Dep'ty clk.

Decision of U. S. district court.

52 Whereupon the following proceedings were had in open court, to wit:

U. S. district court, southern district of California,—Regular June term, A. D. 1857.

JUNE 6, A. D. 1857.

THOS. COLE, appellant,
vs.
THE UNITED STATES, appellee. } No. 274.

Now, on this day, come the parties by their respective attorneys, the appellant by D. S. Gregory, esq., and the appellees by P. Ord, U. S. district attorney.

Whereupon attorney of appellant files a deposition of D. Spence and a traced copy of judicial possession; and after argument of counsel aforesaid, the same is submitted to the court for final adjudication.

Whereupon the court, being fully advised in the premises, delivered its opinion, confirming the claim of the appellant to the extent of two hundred and fifty varas long by one hundred and fifty broad, according to the boundaries of a piece of land laid down in the judicial possession given by David Spence in 1840; and a decree was ordered to be entered up in conformity to said opinion, which is accordingly done.

53 *Decree.*

United States district court for the southern district of California.—June term, 1857.

D. S. GREGORY and E. L. WILLIAMS substituted in place of THOMAS COLE, original claimant, appellants,
vs.
THE UNITED STATES, appellee.

Docket, No. 274.
Claims for lands in Monterey county.

The above entitled cause coming on to be heard at a stated term of said court, on appeal from the land commission to ascertain and settle private land claims in California, under an act of Congress approved March 3d, 1851, upon a transcript of the proceedings had before said commissioners, and of the evidence in said cause, which has been duly filed in this court, and upon further evidence taken on appeal,

It is ordered, adjudged, and decreed by the court, that the decision of the said commissioners, rejecting the claim of the said Cole for the land described in his petition and the said transcript, be, and the same is hereby, reversed. And it is further ordered and decreed by the court, that the title of the said appellants, Durell S. Gregory and the said Edward L. Williams, for the said land, is a good and valid title, they, the said Gregory and Williams, having by a previous order of this court been substituted as parties appellants in place of the said Cole.

The lands, of which confirmations is hereby made, is bounded and described as follows, being situate in the county of Monterey
54 and State aforesaid, and one of the said pieces of land being three hundred and fifty varas long by one hundred and fifty varas wide, and being bounded on one side by the river Salinas, on another by the lands of Higueroa, and on another by the lands of Joaquin Gomez; and the other of said tracts containing four hundred varas square, bordering upon the said river, and bounded on another side by the above-described tract of land, and lying on the northwest side of the same, reference for further and more particular description to be had to the grants and proceedings had to obtain the same, copies of which are contained in the said transcript, and to the record of juridical possession as proven by the witness, David Spence; the last mentioned of said grants having been made on the 28th day of February, A. D. 1844, by Manuel Micheltoreno, then governor of Upper California, to the said Cole, and the former of said grants having been made on the 8th December, A. D. 1842, by Juan B. Advarado.

ISAAC S. K. OGIER, *U. S. dist. judge.*

Filed 8th June, '57.

A. S. TAYLOR, *Dep'ty c'lk.*

Motion for leave to appeal.

55 Whereupon the following proceedings were had in open court, to wit:

U. S. district court, southern district of California.—Regular December term, 1857.

MARCH 15, A. D. 1858.

D. S. GREGORY & E. L. WILLIAMS,
vs.
THE UNITED STATES. } No. 274.

On motion of E. J. C. Kewen, acting U. S. district attorney, for leave to take appeal in this case, and the same is taken under advisement.

Withdrawal of motion for appeal.

U. S. district court, southern district of California.—Regular December term, 1858.

DECCMBER 7, 1858.

D. S. GREGORY & EDW. L. WILLIAMS
vs.
THE UNITED STATES. } No. 274.

Now, on this day, comes J. R. Gitchell, U. S. district attorney, and moves the court to withdraw the motion heretofore made and filed to appeal this case; which motion being heard by the court, is granted; and the said motion heretofore filed is, and the same is hereby, withdrawn.

56 *Order of appeal.*

United States district court, southern district of California.—Regular December term, A. D. 1861.

DECEMBER 9, A. D. 1861.

THOMAS COAL, appellant,
vs.
THE UNITED STATES, appellee. } No. 274, D. C.
No. 716, L. C.
350 and 150 varas. Monterey county.

And now comes J. R. Gitchell, esq., appointed at the request of the court to act in behalf of the U. S., (there being no U. S. district attorney present,) and moves the court that an appeal be allowed the U. S. in this case to the Supreme Court of the U. S. from the order and decree of this court heretofore rendered; which motion being heard, and by the court understood, is granted.

57 U. S. district court, southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, John O. Wheeler, clerk of the United States district court for the southern district of California, do hereby certify the foregoing sixty-four pages, numbered from 1 to 64 inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in my office, in case No. 274 on the docket of said court, wherein Thomas Coal was, and D. S. Gregory et al. are the claimants against the United States for the place known as "Two tracts of land in Monterey county."

In witness whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Los Angeles, the 30th day of December, A. D. 1861.

JOHN O. WHEELER,
U. S. dis't cl'k, south'n dis't of California.

SUPREME COURT OF THE UNITED STATES.

No. 128.

THE UNITED STATES, appellants,
vs.
D. S. GREGORY AND EDWARD L. WILLIAMS, appellees.
} December Term, 1863.

Thomas Coal

APPEAL FROM THE SOUTHERN DISTRICT OF CALIFORNIA.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

Thomas Coal, or Cole, the assignor of the present claimants in this case, filed his petition before the land board, claiming two tracts of land, described as follows: 1st. "A tract or parcel of land, in said Monterey, two hundred and fifty varas long by one hundred and fifty varas broad, with one hundred varas more for a house and corral, as designated by the proper judge." (Printed record, p. 1.)

250 × 150 varas = 37,500 square varas.
Add for house and corral, 100 = 37,600 square varas.

This tract was claimed under a grant from Alvarado.

2d. "He also claimed 400 varas *square*, in addition to the above-described tract, and adjoining the same river." (Ib., p. 2.) This he claimed under a grant from Micheltorena.

2d claim, 400 × 400 = 160,000 square varas.
1st claim, 250 × 150 + 100 = 37,600

Whole claim ..... 197,600 square varas.

The decree of the district court, from which the present appeal is taken, is in these words:

"The lands, of which confirmation is hereby made, *is* bounded and described as follows: Being situate in the county of Monterey and State aforesaid, and one of the said pieces of land *being three hundred*

and fifty varas long by one hundred and fifty varas wide, bounded, &c., and the other of said tracts containing four hundred varas *square*, bordering, &c." (Ib., p. 23.)

1st grant, 350 × 150 varas =	52,500	square varas.
2d grant, 400 × 400 " =	160,000	"
	212,500	"
Deduct amount of claims ..	197,600	"
Excess.....	14,900	varas, above claim.

Thus it appears, at the outset, that the claimants have a decree for 14,900 square varas more than were originally claimed by the Mexican grantee, under whom they claim. The source of this error is obvious. The "100 varas for the house and corral," which ought only to have been *added* once, have been *multiplied* 150 times. 100 × 150 = 15,000—100 = 14,900. Strange as this may seem, still it is only the *beginning* of the errors found and mistakes, which characterize this case from beginning to end.

First grant.

I. The first tract is claimed under a grant from Governor Alvarado, attested by Jimeno, and dated December 8, 1842. (Printed record, pp. 2 and 8.) This grant is for "250 varas long by 150 broad, with 100 varas more for a house and corral, all according to the measurement which was made by the judge of this place, &c. Given at Monterey, &c." So far all looks very well. But unfortunately for this branch of the claim, this grant is not to be found in Jimeno's Index, although Jimeno himself is the attesting secretary, and by the grant is a witness to its issuance. Still worse, Jimeno was not called as a witness to *authenticate* the grant. No expediente from the archives of California land grants was offered in evidence, and for the best of reasons: because none existed. It is, therefore, a grant produced from the *private possession* of the claimant; authenticated only by proof of the *handwriting* of the governor and his secretary, (ib., p. 2, fol. 5,) without a shadow of archival evidence to sustain it.

Under the repeated decisions of this court, therefore, this first grant must be regarded as *fraudulent* and *void.*

The testimony of David Spence, and the little document which was so conveniently "*found*" by one of the present claimants, cannot save it.

In his first testimony Spence locates the land "at a *place* on the *Salinas river, known by the name of Tucho.*" (Ib., p. 3.) In his second testimony, forgetting what he had sworn first, he swore: "The land is situated at a *place* which was *then called* and *known still as the Pueblo of Refugio*, on the *north* bank of the Salinas river," &c. (Ib., p. 20.) In a deed from Cole to Gregory, one of the claimants, it is described as "being situated in the county of Monterey, on the *western* side of

the Salinas river," &c. (Ib., p. 18, fol. 41.) The *locality* of the grant, therefore, is uncertain, and the *quantity* of it, in his first testimony, he did not recollect. (Ib., p. 3.) For these reasons the claim was rejected by the land board. (See opinion, p. 10, 11.)

The history of the *discovery* of the *little document* which was to fill these gaps is quite interesting.

After the rejection of the claim by the land board, on the 11th of January, 1856, Cole, the original claimant, conveyed *two-thirds* of his claim to D. S. Gregory, *his lawyer*, (ib., pp. 13, 14, 16,) for the nominal sum of $250, (ib., p. 18,) probably for fees.

On the 10th day of December, 1856, he conveyed the remaining *one-third* to Edward L. Williams, *county recorder of Monterey county*, (ib., pp. 17, 19,) for the sum of one dollar, (ib., p. 16.) Thus the claim passed entirely out of the hands of Cole, and came into the hands of the present claimants, who were substituted in his stead. (Ib., p. 16, fols. 36, 37.)

On the 5th of June, 1857, the little document was "found," as appears by the official certificate of *Edward L. Williams*, one of the claimants in this case. It is in these words:

"OFFICE OF THE COUNTY RECORDER.

"I, Edward L. Williams, county recorder in and for Monterey county aforesaid, and, as such, having in my office, and in my charge and custody, sundry written documents transferred to this office, relative to the former Spanish and Mexican territory or department of Upper California, *by virtue* of the power vested in me by law, do hereby certify that the hereunto annexed sheet of tracing paper, containing one page of writing, and verified by my initials thereon, *exhibits a true and accurate copy of a portion of writing in an unbound book on the page following the one marked* 7. In witness whereof," &c. (Ib., p. 31.)

The nature of "the unbound book" is not described in the certificate. The "portion of writing" is certified not as found "on page 7," or "on page 8," but it is found snugly placed "on the page following the one marked 7." The document referred to has no date; but it is said by Spence to refer to a transacaction which occurred in 1839 or 1840, in the time of Alvarado. (Ib., pp. 3, 20.) But it has the custom-house certificate of *habilitation* for the years 1834 and 1835, which is signed by Figueroa. (Ib., p. 20, fol. 47.) That is, five or six years prior to the date of the transaction. Rather old! The document itself is *not in the usual form* of the detailed statements of the forms and ceremonies attending the delivery of possession, which are so peculiarly Spanish. On the contrary, it is a brief, business-like note, and very American in its appearance, although it wears a Mexican mask, and speaks Spanish. It is as follows:

"THOMAS COLE.

"On the following day, measured to the *foreigner* Thomas Cole, two hundred and fifty varas long and one hundred and fifty broad, adjoining José Higuera, *on the west*," *&c.* (Ib., p. 21.)

Its further history is given by David Spence in his testimony:

"Quest. Look upon the document here exhibited to you, purporting to be evidences of juridical possession of lands given by you to Thomas Cole, as justice of the peace, jurisdiction of Monterey, and state what you know about the same.

"Ans. I have looked on the document referred to, and *recognize the writing of my secretary, Manuel Castro*, and my own rubrica. I recollect very well of *having given possession* to Thomas Cole *of the land referred to* in said document when I was justice of the peace of Monterey in 1840. * * * The document referred to is the *original evidence* of the possession given by me. * * * *

"Quest. Why was not the said document *signed* by you in your official capacity?

"Ans. *It has my rubrica*, which, according to Mexican law, was considered sufficient in instances of this kind." (Ib., p. 20, fols. 46, 47.)

The document is in the handwriting of *Manuel Castro;* is not signed by the justice, but has a rubrica, which the document does not exhibit, and it is not stated by whom it was made, whether by Castro or by himself.

The statement which this witness first gave of his connexion with the matter is somewhat different: "I measured off to Thomas Cole a certain portion, the quantity I do not recollect. *I gave him a certificate, showing the quantity I had given to him, so that he might present it to the governor in order to obtain a title for the same.*" (Ib., p. 3, fol. 6.)

Was this the *same* document before referred to, or was it a *different* one? If it was the *same*, how came it to be "found" where it was "found," written on the leaf of an "unbound book," in the recorder's office of Monterey? If it was a *different* one, then the former was *not* the *original* evidence, as apparently sworn to by Spence.

Further light will be thrown on this first branch of the claim by the consideration of the second branch.

Second grant.

II. The claim under this grant has more foundation than the first. An expediente from the archives is given in evidence. The grant is found noted in Jimeno's Index thus: "No. 351, Feb. 28, 1844, Rio de Monterey, 400 vs. a Don Tomas Cole." In the Toma de Razon, it is also recorded thus: "No. 208. Don Tomas Cool, Feb. 28, 1844. Title is granted for four hundred varas (cuatro cientos v's) in continuation of the two hundred and fifty varas, and the one hundred for a town lot, ('cieu de solar,') which were previously granted."

It will be observed that in both these registries, the quantities granted are quantities of *superficial contents;* that nothing is said about *squaring* the grants.

In Cole's petition to Governor Micheltorena for the second grant, he "represents that the 250 varas of land ('las 250 varas de terreno') which have been granted to him are not sufficient for the agricultural

and other rural pursuits which he follows and prays your excellency to grant him the augmentation of *four hundred varas* on the northwest side thereof, and in the bottom land *on the river at this place*, (*Monterey*,) which is vacant and unoccupied," &c. (Ib., p. 5.)

Feb. 24, 1844. Jimeno reported in favor of a grant for 400 varas. (Ib., p. 6.)

Feb. 28, 1844. Governor Micheltorena made his decree of concession in these words: "I declare Don Tomas Cole to be the owner of 'cuatrocientos varas *cuadras*'" &c.,—translated, "four hundred varas *square*." (Ib., p. 4, fol. 10, and p. 6, fol. 14.) But this is a *gross mistake*. The word "cuadras" is bad Spanish for "cuadradas," or it may be a *contraction* of that word, as is very common in these papers. The phrase "varas cuadradas" means "*square* varas," as contradistinguished from varas *square*. (See Galvan's Ord. de Tierras y Aguas, pp. 125, 127, 129.) It expresses superficial contents, as is shown by the fact that it is used to express the *area* or *surface*, and expresses the contents, after an *arithmetical multiplication* for that purpose, of the sides of the figure or form of the tract of land granted. (See also United States *v.* Miranda, records of the Supreme Court, vol. 1, January term, 1842. Testimony of Trist and others, written pages 146, 148, 150, 151, 152, 153, 154, 155, 156, 158, 160.) The grant, therefore, was for 400 *square varas*, and not for 400 *varas square*. The fact that the increase was an addition of *square varas*—from their connexion with the previous grant, as stated in the decree of concession—shows that it also was a grant of *square* varas—of superficial, as contradistinguished from lineal, varas. (See the decree, ib., p. 6, fol. 14.)

The language of the subsequent *grant* is different in *words*, but *identical* in meaning. The phrase is, "cuatrocientos varas *en cuadro*," that is, "four hundred varas *in a square form*," and makes the same distinction between "square varas" and "varas square." See the authorities in the Miranda case before cited; also the argument in the case of the United States *vs.* Carrillo, No. 126 of this term, and the decision in that case.

The result of this examination, therefore, is, that *the only legal evidence of the* FIRST *grant*, is that *implied* by the second, and that the two grants, taken together, were designed to confer title to 250 + 100 + 400 varas = 750 varas; that is, to $7\frac{1}{2}$ 100-vara lots, or their equivalent in superficial contents, instead of the 197,600 square varas claimed, or the 212,500 square varas confirmed by the decree. This result makes the claim "small by degrees and beautifully less."

If, as is alleged, the land lies near the city of Monterey, we can see the obvious motive for the *fabrication* of the first grant from Alvarado. It was to get "varas square" instead of "square varas." The second grant having named 250 varas, *that* was made the length of the grant and 150 varas its breadth, plus the 100-vara town lot for a house and a corral. As we have seen, *error* also combined with *fraud* to enlarge the claim still more. But we trust that both have been exposed, and the truth vindicated, as to the *quantity* of the grants.

III. The next objection is, the difficulty of defining the *locality* of the grant.

No map is given in evidence, and the evidence as to the locality of the grants is conflicting.

The expediente accompanying the second grant represents the land as being "on the bank of *the river of Monterey.*" (Ib., p. 5, fol. 12.) So also the decree of concessien. (Ib. p. 6, fol. 14.) The grant itself represents it as being "situated along the margin of *the river,*" without naming any river. (Ib., p. 10.) David Spence testifies, in his first examination, that it lies on *the Salinas* river, at *a place* called Tucho. (Ib., p. 3.) In his second examination he say is at a *place* "*known as the Pueblo of Refugio*, on the *north* bank of the *Salinas river.*" (Ib., p. 20.) In the deed from Cole to Gregory, it is represented as being "situated on the *western* side of the Salinas river." (Ib., p. 18.)

From an examination of several maps of California, the only river represented as emptying into the bay, near the town of Monterey, is the *Carmelo river.* Whether the land is situated on this river, or on the river known both as the Rio de Monterey and the Salinas river, there is no evidence in the case to show. The Salinas river, however, does not empty near the town of Monterey. But granting that the Salinas river, the Carmelo river, and the river of Monterey are one and the same stream, one part of the evidence represents the land as being on the *north* bank of that river, and another part as on its *western* bank. Now, both the Carmelo and the Salinas rivers flow *northwest;* consequently, by a Hibernianism, the *north* bank of either of those rivers would be the *eastern* bank, and the *western* bank would be the *southern* bank; that is, the *same* land is on two *opposite* sides of the same river. This confusion is made still greater by the statement made in the petition for the second grant. It asks for "400 varas on the northwest side of (his former grant) in the bottom land *on the river at this place.* Signed, *Monterey*, Jan'y 31, 1844. (Ib., p. 5, fol. 12.) This would seem to locate it on the *Carmelo* river.

This claim was rejected by the land board, on the ground of the uncertainty of its location. (See opinion, Ib., p. 11.) No new evidence has been offered to remove that uncertainty. All this uncertainty has grown out of the failure of the petitioner, in both cases, to comply with the regulations of 1828, which require a *map*, describing the location of the lands petitioned for and granted. He must, therefore, suffer the consequences of his own neglect and disregard of law.

IV. The last objection is, that there is no sufficient evidence in the case to show that the original conditions of occupancy and improvement in colonization grants were *complied* with by the grantee; or if they ever were, that the lands were *not abandoned* by him before the cession of California to the United States.

The only evidence on this point is the testimony of Spence and Gomez.

Spence says he measured the land for Cole in 1839 or 1840. "Thomas Cole resided there *a while* after I made the measurement

above referred to, *and then removed to another place. I cannot tell how long he lived there after the measurement was made.*" (Ib., p. 3, fol. 7.)

Gomez says: "Having said expediente, [in his hands,] I state that I do know said lands, and have known them *since* they were in Thomas Cole's possession; am not certain when it was, whether in the year 1843 or 1844. * * He lived upon it, cultivated it, had corrals and a house upon it, and had a part it under fence."

"What was there, if anything, to make the boundaries between these lands and your father's?" "Answer. *I don't know.*" "How many years did Thomas Cole own said lands?" "Answer. From six to eight years." (Ib., p. 22, fols. 50, 51.)

This witness was examined June 4, 1857. Cole sold his interest in the grant, as we have seen, in the year 1856. The grant professes to have originated in 1839 or '40. Six years from that time would extend his occupancy to 1845 or 1846. But this is *contrary* to the testimony of Spence. It is evident, from his sale to the present claimants in 1856, that he had not sold his claim previously. If he moved away *before* the cession of California, inasmuch as there was no such thing as a *leasing* of rural lands in California at that time, he must have abandoned them. The presentation of this claim before the land board was therefore the *revival* of *an abandoned* claim.

For these reasons, we contend that the decree of the court below should be reversed, and the claim rejected. But if confirmed at all, it can only be confirmed for 750 square varas, including therein the lands first granted, occupied, and improved; or, at most, for 7½ 100-vara lots, to be surveyed in a square form.

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